

**UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS
CENTRAL DIVISION (WORCESTER)**

MICHAEL DAWE
Plaintiff,

V.

CAPITAL ONE BANK
Defendant.

CASE NO. 04-40192 FDS

**AFFIDAVIT OF COUNSEL IN SUPPORT OF CAPITAL ONE BANK'S
MOTION FOR SUMMARY JUDGMENT**

The undersigned hereby deposes and states under oath as follows:

1. I am counsel of record for defendant Capital One Bank.
2. The document attached hereto as Exhibit A is a true and accurate copy of Plaintiff's Responses to Defendant's Requests for Admission, the original of which was served on me on or about June 2, 2005 and is in my possession.
3. The document attached hereto as Exhibit B is a true and accurate copy of Plaintiff's Responses to Defendant's First Set of Interrogatories, the original of which was served on me on or about May 26, 2005 and is in my possession.

Signed this 25th day of October 2006.

/s/ Bruce D. Berns
Bruce D. Berns (BBO# 551010)
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